

² The Board notes that following the February 25, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In support of her claim, appellant submitted medical evidence from a physician assistant.

In a January 8, 2020 development letter, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received a December 26, 2019 urgent care note by Dr. Charisse C. Davenport, a Board-certified internist, who performed an examination and diagnosed a sprain of other ligament of the left ankle.

In a January 23, 2020 response to OWCP's questionnaire, appellant related that, while assisting a patient on December 26, 2019, she reached across his bed and felt a severe pain in her left heel, ankle and calf.

By decision dated February 14, 2020, OWCP denied appellant's traumatic injury claim finding that the evidence was insufficient to establish that the diagnosed left ankle condition was causally related to the accepted December 26, 2019 employment incident.

By letter dated and received on February 5, 2021 appellant, through counsel, requested reconsideration of OWCP's February 14, 2020 decision. In support of the request, she submitted reports of Dr. Alan J. Kleiman, a podiatric surgeon, dated July 20 and August 21 and 23, 2020; Dr. Lemeneh Tefera, an emergency medicine specialist, dated October 5, 2020; and Dr. Jennifer R. Seifert, a podiatrist Board-certified in foot and ankle surgery, dated October 25, 2020.

On February 11, 2021 appellant, through counsel, indicated that he was submitting additional evidence "in support of the pending [r]equest for [r]econsideration." He submitted a letter dated February 1, 2021 by Dr. Seifert outlining treatment she provided to appellant for left ankle injuries which had occurred as the result of a work-related incident on December 26, 2019 and a nonwork-related incident on October 5, 2020. Also attached to the letter was an undated and unsigned summary of events and treatment for both incidents. OWCP also received reports of various diagnostic studies.

By decision dated February 25, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It indicated that her request for reconsideration was "received on February 19, 2021."

The Board has duly considered this matter and finds that OWCP improperly determined that appellant's request for reconsideration was untimely filed.³

By letter dated February 5, 2021, appellant's counsel requested reconsideration of the February 14, 2020 decision; outlined various arguments; and enclosed medical records not previously considered. OWCP noted a received date for the letter and enclosures in the Integrated Federal Employees' Compensation System (iFECS) of February 5, 2021. The Board finds that the

³ *Order Remanding Case, J.C.*, Docket No. 20-1360 (issued March 12, 2021); *I.A.*, Docket No. 19-1910 (issued September 29, 2020); *Order Remanding Case, D.F.*, Docket No. 20-0267 (issued June 29, 2020); *E.S.*, Docket No. 17-0698 (issued July 14, 2017).

February 5, 2021 letter, received by OWCP on February 5, 2021, constituted a timely request for reconsideration of OWCP's February 14, 2020 merit decision.⁴

As the February 5, 2021 request for reconsideration was received within one year of OWCP's February 14, 2020 merit decision,⁵ it was timely filed.⁶ Therefore, OWCP should have applied the standard applicable to timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3), rather than the more stringent clear evidence of error standard for untimely reconsideration requests set forth in 20 C.F.R. § 10.607(a). Because it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard which applies to untimely filed reconsideration requests, the Board will remand the case for review of this evidence under the proper standard of review for timely reconsideration requests.⁷

Thus, the Board finds that this case must be remanded for proper adjudication and application of the appropriate standard of review, to be followed by an appropriate decision. Accordingly,

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (February 2016).

⁵ *Id.*; *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

⁶ *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *R.M.*, Docket No. 17-0473 (issued June 6, 2017); *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

⁷ *Order Remanding Case, L.N.*, Docket No. 19-0170 (issued August 21, 2019).

IT IS HEREBY ORDERED THAT the February 25, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 10, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board